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Supreme Court, U.S.
FILED
OCT 26 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-28

In the Supreme Court of the United States

OCTOBER TERM, 1988

CYRIL ONWUASOANYA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

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3 pp

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SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

Pursuant to Rule 22.6 of the Rules of this Court, the Solicitor General respectfully files this supplemental memorandum to inform the Court that on October 21, 1988, a check in the amount of the funds that were seized from petitioner's bank account was delivered to counsel for petitioner at the Office of the United States Marshal, which had custody of the funds. Because the property in question has been returned to petitioner, there no longer is a live controversy in this case over whether petitioner was entitled to file a motion under Fed. R. Crim. P. 41(e) seeking the return of that property. This development removes any doubt that this case is moot.

Petitioner stated in his reply brief (at 1-2), filed on October 18, 1988, that the seized funds had been placed by the Marshal's Service in an interest-bearing account. However, petitioner subsequently informed the Clerk, by letter dated October 20, 1988, that this statement was er-

roneous. The Marshal's Service likewise has informed us that the account in which the funds were deposited does not draw interest. Accordingly, if we assume for present purposes that Rule 41(e) applies in this setting, there can be no basis for a claim that the property "returned" to petitioner under Fed. R. Crim. P. 41(e) must include interest that was actually earned on the property while it was in federal custody.

It is unclear whether petitioner further argues that he is entitled to be paid interest even though the funds did not actually earn interest during the period that they were in federal custody. But even if petitioner's filings are understood to present such an argument, that argument cannot be litigated in proceedings on a motion for return of property under Fed. R. Crim. P. 41(e). As a jurisdictional matter, any claim to a money judgment representing the interest that petitioner believes should be paid on the property must be litigated in another forum, such as in the district court or the Claims Court under 28 U.S.C. 1346(a)(2) or 1491—although, on the merits, the United States would not in any event be liable for an allegedly unauthorized or otherwise wrongful seizure of property. *Regional Rail Reorganization Act Cases,* 419 U.S. 102, 127 n.16 (1974); *Florida Rock Industries, Inc.* v. *United States,* 791 F.2d 893, 899 (Fed. Cir. 1986), cert. denied, 479 U.S. 1053 (1987); see also 28 U.S.C. 2680(c). Accordingly, the matter of interest does not save petitioner's claim under Fed. R. Crim. P. 41(e) from being moot.

Respectfully submitted.

CHARLES FRIED
Solicitor General

OCTOBER 1988

☆ U.S. GOVERNMENT PRINTING OFFICE: 1988—241-699/60735